

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.622(b),) MM Docket No. 01-1
Table of Allotments,) RM-10013
Digital Television Broadcast Stations.)
(Macon, Georgia))

To: Chief, Video Services Division

OPPOSITION TO MOTION TO ACCEPT LATE-FILED COMMENTS

Macon Urban Ministries, Inc., d/b/a Good News Television, licensee of television broadcast station WGNM, Channel 64, Macon, Georgia, through counsel, hereby opposes the Motion, filed April 9, 2001, by Georgia Public Telecommunications Commission ("GPTC") for leave to submit, out-of-time, "Reply Comments" in the above-referenced proceeding.¹ GPTC's motion should be denied summarily, its "Reply Comments" rejected, and its earlier-filed counterproposal dismissed.

First, GPTC's "Reply Comments" are not Reply Comments at all. They do not "reply" to comments filed February 26, 2001, by Good News Television and the Petitioner, Gannett Georgia, L.P. ("Gannett"). Rather, they respond to timely Reply Comments by Good News Television and Gannett, in which Gannett pointed out serious technical defects in GPTC's original counterproposal and Good News Television took issue with the premises underlying GPTC's claim to comparative superiority for its counterproposal. The GPTC "Reply Comments" are nothing more than an attempt

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¹ This Opposition to GPTC's Motion is timely, under Section 1.46(a) and Section 1.4(e) and (h) of the Rules.

to have the last word, nearly four weeks after the date set by the FCC for Reply Comments. They are not merely late, they are not even contemplated by the rules.

Second, Gannett's Reply Comments showed that GPTC's counterproposal, as originally filed, was subject to fatal technical deficiencies. The GPTC "Reply Comments" purport to correct those defects but FCC precedent "requires counterproposals to be technically and procedurally correct at the time they are filed." *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Clewiston, Florida, etc.)*, 10 FCC Rcd 6548, 6549 (1995). GPTC claims (*Reply Comments*, p. 5) to have resolved the technical issues by "re-orienting the proposed antenna." It also, however, acknowledges in a footnote (*Reply Comments*, p. 6 n. 6) that it must increase ERP from 3 to 17 kW. The revised counterproposal described in the GPTC "Reply Comments," therefore, is substantially different, with significantly different preclusive effects, than the counterproposal GPTC submitted at the February 26, 2001, deadline. It is, effectively, an untimely *new* counterproposal and the "Reply Comments" should be rejected for that reason alone.

The GPTC "Reply Comments" are thus unauthorized, untimely, and insufficient to redeem GPTC's technically deficient counterproposal. Neither does the substance of those "Reply Comments" enhance the FCC's ability to determine where the public interest lies. Hence there is no necessity that the FCC consider the "Reply Comments" in the interest of a more complete record. Aside from the substantial revision of GPTC's counterproposal, the "Reply Comments" are devoted to two themes: (1) the alleged economic justification for preferring GPTC's proposal to those of Gannett and Good News Television, and (2) GPTC's avowedly superior programming and instructional services. The first of these arguments leads the FCC down a slippery slope into a boundless, murky swamp. The FCC cannot seriously contemplate ordering the Table of Allotments

for Digital Television Stations on the basis of relative impecuniousness. Good News Television repeats the point of *its* Reply Comments: if the financial burden of converting to digital broadcasting was a criterion for receiving advantageous VHF channel allotments, many stations, commercial and noncommercial, would have a more compelling claim than GPTC. Good News Television, for example, although it operates a commercial television station, is owned by a Section 501(c)(3) corporation affiliated with the South Georgia Conference of the United Methodist Church. Good News Television is operated not to pursue a profit but to serve the corporation's purpose of "ministering to the needs of inner-city residents and providing an outlet for youth involvement in the community."² It does so without the benefit of legislative appropriations or federal grants. But it does not claim an entitlement to a more cost-effective DTV channel by virtue of its charitable status and limited resources.

GPTC's second theme – the claimed superiority of its proposed programming – by its own admission (*Reply Comments*, p. 9 n. 13) raises "serious First Amendment issues." GPTC continues, however, to argue that Gannett cannot favorably compare its programming, "with its high commercial content and limited children's programming . . . to the public television and educational fare of Station WGTV." This self-laudatory assessment boils down to a claim of entitlement to a valuable public benefit because "my speech is better than yours." The award of a channel allotment based on such a premise would not merely affront the First Amendment but would trample on it.

Last, this Opposition rebuts GPTC's claim (*Reply Comments*, p. 8 n. 11) that Good News Television's proposed reassignment of Channel 45 at Macon as the paired DTV allotment for WGNM-DT is "not a true counterproposal." "A counterproposal is a 'proposal for an alternate and

² Macon Urban Ministries, Inc., Articles of Incorporation, Article III.

mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made.” *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Eufala, Oklahoma, etc.)*, 12 FCC Rcd 3743 (1997) (quoting *Implementation of BC Docket No. 89-90 to Increase the Availability of FM Assignments*, 5 FCC Rcd 931 (1990)). In the *Notice of Proposed Rule Making* in this proceeding, DA No. 01-001, released January 5, 2001 (the “*NPRM*”), the FCC proposed to delete Channel 45 from the Table of DTV Allotments at Macon, Georgia; Good News Television proposed to retain Channel 45 in the Table of Allotments and assign it to WGNM-DT. The conflict between the *NPRM* and Good News Television’s counterproposal could not be more direct.³

³ The holding in the case cited by GPTC, *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Littlefield, Texas, etc.)*, 12 FCC Rcd 3215 (1997), is ambiguous, at best. The case cited by the FCC in *Littlefield* for the proposition on which GPTC relies is *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cut and Shoot, Texas)*, 11 FCC Rcd 16383 (1996). In *Cut and Shoot*, the FCC returned a Petition for Rule Making which was short-spaced to a station’s licensed facilities but fully-spaced to the same station’s outstanding construction permit. The FCC announced a new policy:

Processing petitions for rule making which would rely on other events by third parties to effect the compliance of the proposal with the separation requirements is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the administrative resources of both the Allocations Branch and the Audio Services Division. . . . This policy of not accepting petitions for rule making contingent on the licensing of facilities set forth in an outstanding construction permit will conserve Commission resources and enable us to process expeditiously the vast majority of rulemaking proposals which are not contingent on the licensing of facilities authorized in a construction permit.

Cut and Shoot, Texas, supra, 11 FCC Rcd at 16384. The counterproposal in *Littlefield* was also rejected on the ground that it was “beyond the scope of this proceeding,” because the FCC had “explicitly stated in the Notice [of Proposed Rule Making] that we were not proposing” the same channel change made in the counterproposal. Thus, the holding in *Littlefield* went beyond the policy enunciated in *Cut and Shoot* and, arguably, was not the actual ground on which *Littlefield* was decided. Good News Television’s counterproposal is not contingent on action by any third party. It only asks the FCC not to do what it has proposed to do – delete Channel 45 from the Table of

In any event, the FCC and the public do not have the luxury of unlimited time in which to complete sequential rule making proceedings to arrive at the best order of DTV allotments at Macon. Good News Television is under an FCC-imposed deadline (Section 73.624(d) of the Rules) to complete construction of DTV facilities by May 1, 2002. Because Good News Television's counterproposal will provide more people with DTV service than WGNM-DT can serve with its existing allotment, and will result in less interference and permit more efficient utilization of other DTV allotments -- and thereby will promote the transition to DTV and the recapture of Channels 60-69 for public safety and other uses -- the FCC should not raise up procedural barriers to permitting WGNM-DT to operate on Channel 45 when it grants Gannett's petition to operate on Channel 4.

Accordingly, GPTC's Motion to Accept Late-Filed Reply Comments should be denied.

Respectfully submitted,

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DTV Allotments at Macon.

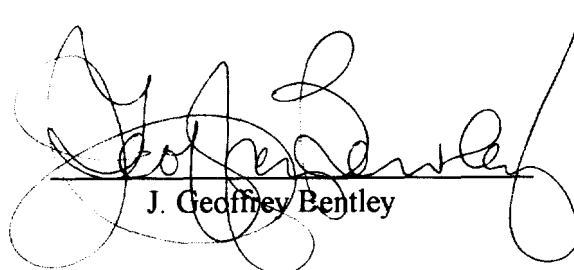
CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposition to Motion to Accept Late-Filed Comments to be served by first-class United States mail, postage prepaid, this 24th day of April 2001, on:

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